AGENDA DATE: 6/9/92

STATE OF NEW JERSEY
Board of Regulatory Commissioners
Two Gateway Center
Newark, NJ 07102

APPLICATION OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR APPROVAL OF THE POWER PURCHASE AGREEMENT BETWEEN JERSEY CENTRAL POWER & LIGHT COMPANY AND FREEHOLD COGENERATION ASSOCIATES, L.P.	)	ORDER OF APPROVAL DOCKET NO. EM9203059

(Service List Attached)

BY THE BOARD:

By letter dated March 31, 1992, Jersey Central Power & Light Company (JCP&L petitioned the Board of Regulatory Commissioners (Board) for approval of the proposed agreement (Agreement) for the purchase of electric power from Freehold Cogeneration Associates, L.P. (Freehold).

Freehold is a New Jersey limited partnership whose general partners are Advanced Power Systems, Inc. and Constellation Energy, Inc., an affiliate of Baltimore Gas & Electric Company, which proposes to own, operate and maintain a cogeneration facility (Facility) at the Nestle Beverages Company plant (Nestle) in Freehold, New Jersey. The Facility will be approximately 112 megawatts (MW) in size and will be a Public Utilities Regulatory Policies Act (PURPA) qualifying facility (QF) under Federal Energy Regulatory Commission guidelines. The Agreement provides

for Freehold to deliver 100 MW to JCP&L and steam and possibly native loan electricity to Nestle.

The Facility will use natural gas of regulatory approval and continues for 20 years from the commercial operation date, which is anticipated to be 48 months after the date of regulatory approval. The commercial operation date may be extended due to force majeure without penalty, and for up to three years by making payments into a liquidated damages fund.

The Freehold/Nestle project is grandfathered under the policies and procedures in effect prior to the current competitive bidding procedures. The Facility was grandfathered in an Order issued on July 31, 1989, in Docket No. 8010-687B. The conditions set forth in the Board's grandfathering Order set a cap on the pricing based on the avoided costs contained in JCP&L's first round of competitive bid Requests for Proposals (RFPs) approved by the Board on June 6, 1989.

The terms and conditions in the Agreement are similar to or superior, from a ratepayer perspective, to those contained in the bid contracts and as established in the Stipulation of Settlement (Stipulation) in Docket No. 8010-687B. Subject to certain technical and contractual limits, JCP&L shall have complete dispatching control of the Facility.

The price in the Agreement is equal to the June 6, 1989 avoided cost. The payment to Freehold is comprised of a variable energy rate of 2.2 cents per kilowatt-hour escalated at 7% per year and a fixed capacity payment which produces a total payment equal to the avoided cost.

Since the variable energy rate in this contract has a fixed escalation rate of 7%, the Board believes a comparable fuel contract is essential to protect electric ratepayers from the possibility that the project would not be financially viable in the future if its actual fuel price escalations significantly exceed 7%. A letter of intent between NJNG and Freehold was reviewed by Board Staff and Staff has indicated to the Board that it is satisfied that its

terms and conditions will allow for the project to be viable over its term.

There is a suspense account provision which requires Freehold to secure 100% of any levelization incurred by the project. Freehold can choose the levelization it requires for financing, between 0 and 65% for a period of up to 20 years. This suspense account exceeds the ratepayer protection incorporated in the Stipulation of Settlement since the competitive bidding guidelines require security only if levelization exceeds 120% of avoided cost for gas projects and the Agreement requires the full amount of the surplus account to be secured with a letter of credit.

The expected capacity factor of the facility is 75% with an average availability of 94%. The fixed payment will be reduced if the facility's annual availability factor falls below 94%. To determine the fixed payment the annual availability multiplier is equal to the lesser of one (1.00) and the quotient obtained by dividing the contract availability by ninety-four one-hundredths (.94). This accounts for outages whether maintenance, forced or force majeure.

In addition, by letter dated April 13, 1992, Freehold requested that the Board find the Facility, which will supply steam to Nestle and electric energy to JCP&L, is not a public utility subject to the jurisdiction of the Board.

The Facility is a qualifying facility (QF) pursuant to Federal Energy Regulatory Commission regulations applicable to cogenerators. The Board has on several occasions previously addressed the issue of whether the sale of steam or electricity from a QF to its thermal host will subject the cogenerator to Board jurisdiction. In its Order in In the Matter of the Petition for Approval of Power Purchase Agreement between Atlantic City Electric Company and Chambers Cogeneration Limited Partnership, Docket NO. EM88111219 (March 31, 1989), where the Board stated as follows:

> Petitioners have also requested that the Board find that the sale by Chambers to Dupont of steam and a

portion of the electrical output of the facility will not result in Chambers being deemed a public utility subject to the jurisdiction of the Board. Chambers, a third party developer, proposes to develop the cogeneration facility on property owned by Dupont and intends to sell thermal and electrical energy and capacity to Dupont with all excess electrical energy and capacity being sold to Atlantic Electric. In instances such as this, where the developer provides thermal and electrical energy and capacity only to the host with all of the excess electrical energy and capacity being sold to a public utility, the Board does not believe that the sale of thermal or electrical energy and capacity to the host should subject the third party developer or its affiliates to the jurisdiction of the Board. Therefore, the Board HEREBY DETERMINES that the sale by Chambers to Dupont of steam and a portion of the electrical output of the facility will not result in Chambers Cogeneration Limited Partnership or any of its individual general or limited partners or their parents or affiliates being deemed a public utility subject to the jurisdiction of the Board.

Freehold requested that the same finding be provided for its Facility. The Facility will sell 100 MW of capacity and energy to JCP&L and will supply steam and possibly native load electricity to Nestle. Its sole steam host will be Nestle.

Board Staff has reviewed a copy of a site plant for the Facility, showing the boundaries for the Facility site and the Nestle property, the location of the Facility and the location of the Nestle plant. The Facility will be located

on land immediately adjacent to the Nestle plant that is owned by Nestle. The steam lines used to deliver steam to Nestle will not cross a public way.

Based upon its review of the location and ownership of the Freehold facilities and their relationship to the industrial host, the Board believes that the proposed Freehold facility meets the standards espoused in the Board's Chambers Order. On that basis the Board concurs that the sale of steam or electricity from the facility by Freehold to Nestle would not subject the developer or its affiliates to the jurisdiction of the Board under present policy.

The Board has reviewed the Order grandfathering the Facility and the conditions established therein and finds that the Agreement meets or exceeds the requirements for approval. The price is equal to 100% of the applicable avoided cost and the contract terms and conditions from the Stipulation were met or exceeded. The long term gas contract when signed will provide a stable fuel supply which will assist in assuring ratepayers that the project will be in a position to produce electricity economically for the term of the Agreement. The Board FINDS that the Agreement is consistent with the grandfathering Order.

Based on the above, the Board FINDS the Agreement to be fair and reasonable and that it will impart substantial benefits to JCP&L's ratepayers over the life of the project.

Accordingly, the Board, having reviewed the Agreement and being satisfied that it is in the public interest and in accordance with applicable law, the aforementioned Board Orders as entered in Docket Nos. 8010-687 and 8010-687B, and the Stipulation of Settlement, HEREBY APPROVES the Power Purchase Agreement between Jersey Central Power & Light Company and Freehold Cogeneration Associates, Inc., dated as of March 26, 1992, and as such finds the rates specified therein and the costs resulting therefrom to be reasonable and reasonably and prudently incurred by JCP&L throughout the full term of the Agreement. Therefore, the Board and its successors will allow JCP&L to flow-through and/or fully and timely recover

the rates specified in the Agreement and the costs resulting thereform in the manner set forth in the Board's Order dated September 28, 1988 (Docket No. 8010-687B) and the July 1, 1988 Stipulation of Settlement adopted thereby, and as clarified in the Board's Order dated October 2, 1990 in Docket No. EM88050655.

In addition, the Board having reviewed the possible sale of thermal and electric energy by Freehold to Nestle, its industrial host, HEREBY DETERMINES that the sale by Freehold to Nestle of steam and a portion of the electric output of the facility will not result in Freehold or any of its partners, parents or affiliates being deemed a public utility subject to the jurisdiction of the Board.

DATED: JULY 8, 1992

BOARD OF REGULATORY COMMISSIONERS

BY:

/s/
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CHAIRMAN

/s/
JEREMIAH F. O'CONNOR
COMMISSIONER

/s/
CARMEN J. ARMENTI
COMMISSIONER

ATTEST:

/s/
IRENE JOHNSON
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utility commissioners

/s/
Chrys Wilson
Secretary

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